

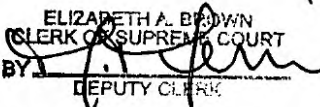
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHNNY L. JOHNSON,  
Appellant,  
vs.  
THE SALVATION ARMY; AND  
SEDGWICK CLAIMS MANAGEMENT  
SERVICES, INC.,  
Respondents.

No. 84206-COA

**FILED**

DEC 22 2022

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER VACATING JUDGMENT AND REMANDING*

Johnny L. Johnson appeals from a district court order denying a petition for judicial review in a workers' compensation matter. Eighth Judicial District Court, Clark County; Nancy A. Becker, Senior Judge.<sup>1</sup>

Johnson worked for respondent The Salvation Army. In July 2018, Johnson injured his back on the job while moving a dresser and underwent treatment related to lower back pain. Multiple radiology tests showed an acute compression fracture and signs of mild to moderate degenerative disc disease. Upon reaching maximum medical improvement in November 2019, Johnson underwent an evaluation for partial permanent disability (PPD) with Dr. Salzano. Dr. Salzano assigned a twenty percent whole person impairment for an acute compression fracture but apportioned the impairment by fifty percent due to pre-existing spinal degenerative change and/or prior compression fracture. Dr. Salzano only had records from Johnson's current treatment, nothing dated prior to the instant injury.

Respondent Sedgwick Claims Management Services, Inc., as claims administrator, offered Johnson the ten percent whole person

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<sup>1</sup>Although the Honorable Nancy Becker, Senior Judge, signed the order at issue, the Honorable Carli Kierny presided over the hearing and issued the oral decision from which the instant order issued.


impairment PPD award. Johnson requested administrative review where the hearing officer affirmed the ten percent offer, finding the award correct under NAC 616C.490. Johnson then appealed administratively. The appeals officer issued a decision and order affirming the hearing officer in February 2021 because Johnson failed to establish he had a greater permanent impairment where the administrative record included substantial evidence from multiple sources upon which the PPD evaluating doctor determined that apportionment of the PPD impairment was proper based on Johnson's pre-existing conditions. The appeals officer did not explicitly find that Johnson's claim was closed. Johnson filed a petition for judicial review in March 2021. The district court denied Johnson's petition for judicial review. This appeal followed.


Johnson argues that NAC 616C.490 requires that the apportionment of the PPD award to preexisting conditions be documented with medical records dated prior to the date of the subject industrial injury. As the evaluating PPD doctor did not have any records dated prior to Johnson's injury, Johnson argues that there is no way to apportion the award pursuant to NAC 616C.490(6). Furthermore, Johnson argues that Senate Bill 289 (now codified at NRS 616C.099, *see* 2021 Nev. Stat., ch. 245, § 1, at 1177) requires the insurer to rely upon documentation predating an industrial injury to apportion as such. *See* S.B. 289, 81st Leg. (Nev. 2021). Respondents counter that NAC 616C.490 does not require that the records showing preexisting conditions be dated prior to the injury, only that the preexisting conditions be shown in medical records and the examining doctor be able to adequately document its reasoning based on actual medical records.


The legislation enacted following the filing of the instant petition for judicial review was effective on May 31, 2021, and it is directly

related to the issues presented in the underlying case. *See generally* S.B. 289, 81st Leg. (Nev. 2021). However, its direct applicability was not addressed below by the parties or the district court. As such, the case needs to be reevaluated in light of the enacted legislation. *Cf. Hsu v. County of Clark*, 123 Nev. 625, 630, 173 P.3d 724, 728-29 (2007) (recognizing federal caselaw holding, in the context of the law of the case doctrine, “that a court may revisit a prior ruling when . . . there has been an intervening change in controlling law”). We further conclude that the consideration and application of the enacted legislation should not be conducted in the first instance in this appeal. Therefore, we vacate the district court’s order denying the petition for judicial review and remand this matter to the district court to remand to the appeals officer to determine the applicability and impact of the enacted legislation.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

cc: Chief Judge, The Eighth Judicial District Court  
Hon. Carli Kierny, District Judge  
Hon. Nancy A. Becker, Senior Judge  
Janet Trost, Settlement Judge  
Edward M. Bernstein & Associates/Las Vegas  
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas  
Eighth District Court Clerk